

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: DEALER MANAGEMENT
SYSTEMS ANTITRUST LITIGATION

This Document Relates To:

*Motor Vehicle Software Corp. v. CDK Global,
LLC, et al.*, Case No. 1:18-cv-00865 (N.D. Ill.)

MDL No. 2817
Case No. 18-cv-00864

Hon. Robert M. Dow, Jr.
Magistrate Judge Jeffrey T. Gilbert

PUBLIC-REDACTED

**PLAINTIFF MOTOR VEHICLE SOFTWARE CORPORATION'S
RESPONSES TO DEFENDANT THE REYNOLDS AND REYNOLDS COMPANY'S
STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

GLOSSARY**ABBREVIATIONS**

Abbreviation	Full Citation
ACOM SUF	Authenticom, Inc.’s Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment on Defendants’ Counterclaims (Dkt. 977)
AL SUF	AutoLoop’s Rule 56.1 Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment on CDK Global LLC’s Counterclaim (Dkt. 950)
CC Br.	Authenticom, Inc.’s Memorandum of Law in Support of Its Motion for Summary Judgment on Defendants’ Counterclaims (Dkt. 978)
Dealer SUF	Dealership Counter-Defendants’ Statement of Undisputed Material Facts in Support of Their Motion for Summary Judgment on CDK Global, LLC’s Counterclaims (Dkt. 968)
DJ SUF	Defendants CDK Global, LLC and The Reynolds and Reynolds Company’s Joint Statement of Common Undisputed Material Facts in Support of Their Motions for Summary Judgment (Dkt. 974)
MSUF	The Reynolds and Reynolds Company’s Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment (Dkt. 956)
PJ RSUF	MDL Plaintiffs’ Joint Response to Defendants CDK Global, LLC and The Reynolds and Reynolds Company’s Joint Statement of Common Undisputed Material Facts in Support of Their Motions for Summary Judgment (filed concurrently)
PJ SAF	MDL Plaintiffs’ Statement of Additional Facts in Opposition to Defendants’ Motion for Summary Judgment (filed concurrently)
Resp. to MSUF	MVSC’s Responses to The Reynolds and Reynolds Company’s Statement of Undisputed Material Facts (filed concurrently)
Caseria Ex.	Exhibits to the Declaration of Leo D. Caseria in Support of The Reynolds and Reynolds Company’s Motion for Summary Judgment and its Local Rule 56.1(a)(3) Statement of Undisputed Facts (Dkts. 957, 958, and 959)
Dorris Ex.	Exhibits to the Declaration of Daniel V. Dorris in Support of Plaintiff Authenticom, Inc.’s Motion for Summary Judgment on Defendants’ Counterclaims (Dkt. 977-1)
Dorris AL Ex.	Exhibits to the Declaration of Daniel V. Dorris in Support of Plaintiff AutoLoop’s Motion for Summary Judgment on CDK Global, LLC’s Counterclaim (Dkt. 950-1)

Abbreviation	Full Citation
Emmanuel Ex.	Exhibits to the Declaration of Jonathan Emmanuel in Support of The Reynolds and Reynolds Company's Motion for Partial Summary Judgment (Dkt. 779-2)
Fenske Ex.	Exhibits to the Declaration of Daniel Fenske in Support of Defendants CDK Global, LLC's And The Reynolds And Reynolds Company's Motion For Summary Judgment (Dkt. 975)
Ho Ex.	Exhibits to the Declaration of Derek T. Ho in Support of MDL Plaintiffs' Oppositions to Defendants' Motions for Summary Judgment (filed concurrently)
Wedgworth Ex.	Exhibits to the Declaration of Peggy J. Wedgworth in Support of Dealership Counter-Defendants' Motion for Summary Judgment on CDK Global, LLC's Counterclaims (Dkt. 968-1)
Wilkinson Ex.	Exhibits to the Declaration of Brice Wilkinson in Support of Reynolds's Motion for Partial Summary Judgment (Dkt. 779-1)

KEY PEOPLE

NAME	COMPANY	TITLE
Don Armstrong	Motor Vehicle Software Corp.	CEO and co-founder
Bob Brockman	The Reynolds and Reynolds Company	Founder, Owner, Chairman, and CEO
Napa Bulusu	Motor Vehicle Software Corp.	Senior Manager, Operations
Leigh Ann Conver	CDK Global, LLC	Senior Director of Strategy
Steve Cottrell	Authenticom, Inc.	Authenticom, Inc. Owner and CEO
Howard Gardner	CDK Global, LLC	Vice President and Manager of Data Strategy
Scott Herbers	CDK Global, LLC	CDK Vice President of Sales, North America; CVR General Manager and [REDACTED]
Keith Hill	The Reynolds and Reynolds Company	Vice President of Sales
Mike Joza	CDK Global, LLC	Senior Director of Business Development
Robert N. Karp	CDK Global, LLC	President of CDK Global, LLC North America
Mark Kithcart	Computerized Vehicle Registration	Vice President of Marketing

NAME	COMPANY	TITLE
Dan McCray	CDK Global, LLC	Vice President of 3PA Product Management
Christopher Morris	CDK Global, LLC	Account Director; [REDACTED] [REDACTED]
Joseph Nemelka	Motor Vehicle Software Corp.	President & Chief Operating Officer
John Roeder	Computerized Vehicle Registration	Senior Director of Sales
Mark Roman	CDK Global, LLC	Director of Sales
Robert Schaefer	The Reynolds and Reynolds Company	Vice President of OEM Relations and Data Services
Jonathan Strawsburg	The Reynolds and Reynolds Company	Vice President of The Reynolds and Reynolds Company; [REDACTED] [REDACTED]
Ron Workman	CDK Global, LLC	Senior Vice President, Global Corporate Development

Plaintiff Motor Vehicle Software Corporation (“MVSC”) responds as follows to Defendant The Reynolds and Reynolds Company’s (“Reynolds”) Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment (Dkt. 956) (“MSUF”). By conceding that a fact is undisputed pursuant to Local Rule 56.1, MDL Plaintiffs do not concede the admissibility or sufficiency of any specific evidence, the materiality of any fact asserted, or the legal significance of any fact or evidence. This response corresponds with the paragraph numbering used in Reynolds’s Statement of Undisputed Facts. MVSC does not respond to Reynolds’s headings or footnotes, which are not purported to constitute statements of facts.

PLAINTIFF MVSC’S RESPONSES

1. Plaintiff Motor Vehicle Software Corporation (“MVSC”), a privately-owned California corporation formed in 2005, provides electronic vehicle registration (electronic registration, license plates, and title, collectively “EVR”) services to franchise new car dealers (“dealers”) in the following four states: California (since 2005, where it has the exclusive endorsement of the state’s dealer association); Oregon (since 2015, where it is the only EVR provider); Virginia (since 2017); and Illinois (since 2018). MVSC Dkt. 76 (Second Am. Compl., “SAC”) ¶¶ 19, 74 (MVSC entered the California EVR market in 2005), id. ¶ 87 (MVSC is the leading provider in Oregon); Ex. 8, Nemelka Tr. 37:2-21, 63:6-8, 258:9-23; Ex. 12, Armstrong Tr. 190:23-191:1; Ex. 7, J. Nemelka Decl. ¶ 25; Ex. 4, Klein Rpt. ¶¶ 9, 93, 104, 106; Ex. 154, Press Release, *California New Car Dealers Association (CNCDA) and DMVdesk Forge Powerful New Partnership*.

RESPONSE: Undisputed.

2. MVSC’s web-based EVR applications (“apps”), called DMVdesk or Vitu, [REDACTED]

[REDACTED]
[REDACTED] Ex. 8, Nemelka Tr. 86:25-88:13; Ex. 19,

DX 76 (MVSC_MDL_0011869) at 871-872; MVSC Dkt. 76 (SAC) ¶ 62-63 (describing DMVdesk and Vitu).

RESPONSE: Undisputed.

3. Settling defendant Computerized Vehicle Registration, Inc. (“CVR”) was founded in 1992 as a wholly owned 80/20 joint venture between settling defendant CDK Global, Inc. (“CDK”) and defendant The Reynolds and Reynolds Company (“Reynolds”), respectively. Ex. 4, Klein Rpt. ¶ 11 ([REDACTED]); Ex. 14, Strawsburg Tr. 31:3-10 ([REDACTED]); Ex. 20, PX 1543 (CVR-0000230) at 243-244 ([REDACTED]); Ex. 14, Strawsburg Tr. 24:17-19 ([REDACTED]); MVSC Dkt. 76 (SAC) ¶ 7 (“CDK exercises substantial control over the decision-making and operations of CVR”).

RESPONSE: Disputed in part. Undisputed that CVR was founded in 1992 as a wholly owned 80/20 joint venture between CDK and Reynolds. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 53, Muntanion (CVR 30(b)(6)) Tr. 45:1-46:10; Ho Ex. 11, Strawsburg Tr. 31:21-32:19. *See also* MVSC’s Response to Reynolds’s Statement of Fact No. 22. Undisputed that CDK exercises substantial control over the decision-making and operations of CVR.

[REDACTED]

[REDACTED]. *E.g.*, Ho Ex. 11, Strawsburg Tr. 24:20-25:5 ([REDACTED])

[REDACTED] Ho Ex. 254, PX 1524, at -9400 ([REDACTED])

[REDACTED]

[REDACTED] Ho Ex. 449, REYMDL00537499, at -7500 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Caseria Ex. 20 (Dkt. 957-20), PX 1543, at CVR-0000244, § 2.9 (CVR Partnership Agreement).

4. CVR once provided EVR services in as many as [REDACTED] states, and currently provides them in 18 states: Virginia (since 1993), California (since 1997), Wisconsin (since 1997), and Illinois (since 2005), as well as Alabama, Florida, Georgia, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, and West Virginia. Ex. 15, Medina 30(b)(6) (CVR) Tr. 25:13-26:17; Ex. 161, CVR, *About Us*; Ex. 162, CVR, *Solutions*; Ex. 48, CVR-0309005 at 007-008, 011-012.

RESPONSE: Undisputed.

5. EVR providers partner with state DMVs to provide EVR services to dealers, and must first obtain state approval – the requirements of which vary by state – before being able to provide EVR services in that particular state. MVSC Dkt. 76 (SAC) ¶ 2; Ex. 1, Israel Rpt. ¶¶ 60, 62; Ex. 8, Nemelka Tr. 38:24-39:22. *See also, e.g., id.* at 255:15-257:16 [REDACTED]

[REDACTED]

[REDACTED]

RESPONSE: Undisputed.

6. Certain states – including California (as of January 1, 2019), Illinois, and Virginia – require EVR transactions to be initiated at the point of sale, *i.e.*, during the sale of the vehicle at the dealership (“point-of-sale states”). Ex. A, Rubinfeld Rebuttal Rpt. ¶ 24 & n.11; Ex. 7, J. Nemelka Decl. ¶ 8.

RESPONSE: Undisputed.

7. Other states – including California (before January 1, 2019) and Wisconsin – do not require EVR to be initiated at the point of sale. E.g., Ex 6, Klein Tr. 305:14-17 ([REDACTED]); Ex. 8, Nemelka Tr. 56:4-57:9 ([REDACTED]); [REDACTED]

RESPONSE: Undisputed.

8. Each state has its own EVR approval process, fees, and regulations, and an EVR provider in one state cannot necessarily provide EVR services in another state. Ex. 1, Israel Rpt. ¶¶ 62-63; MVSC Dkt. 76 (SAC) ¶ 50; Ex. 8, Nemelka Tr. 94:11-95:4, 95:18-96:18; Ex A, Rubinfeld Rebuttal Rpt. ¶¶ 24, 52, 54.

RESPONSE: Undisputed.

9. Three categories of data are needed to process EVR transactions: (1) car buyer identification; (2) vehicle identification; and (3) financing information, which includes Personal Identifiable Information (“PII”), such as addresses and drivers’ license numbers, and Non-Public Personal Information (“NPPI”), such as financing information, subject to various state and federal data protection and privacy laws. MVSC Dkt. 76 (SAC) ¶ 47; Ex. 1, Israel Rpt. ¶ 60; Ex. A, Bresnahan Rebuttal Rpt. ¶ 49; Ex. 9, R. Schaefer Decl. [Auth. Dkt. 97] ¶¶ 21-25; Ex. 8, Nemelka Tr. 59:4-21, 59:24-60:4.

RESPONSE: Undisputed.

10. This data can be accessed from a dealer's Dealer Management System ("DMS") in multiple ways: (1) through certified integration from the DMS provider, *e.g.*, Reynolds Certified Interface ("RCI") or CDK's Third Party Access ("3PA") programs; (2) through manual reporting tools built into the DMS that allow dealers to export and transmit reports to third party apps of their choosing; and (3) by "hostile integrators" like Authenticom. *See* Ex. 8, Nemelka Tr. 45:11-14, 46:8-13, 47:10-48:19; MVSC Dkt. 76 (SAC) ¶ 172 (manual reporting tools allow dealers to run a script that creates a report, the report is placed in a folder on the dealership's local hard drive, and then is transferred to a third party app); Ex. A, Bresnahan Rebuttal Rpt. ¶ 62.

RESPONSE: Disputed in part. Undisputed that the data EVR providers require for processing EVR transactions is stored on the DMS. Undisputed that EVR providers can access this data through certified integration programs from the DMS provider, such as the Reynolds Certified Interface ("RCI") or CDK's Third Party Access ("3PA") program. Undisputed that EVR providers can access the data they need through independent integrators like Authenticom, but disputed that these integrators access data in a manner that is "hostile." *Ho* Ex. 4, Nemelka Tr. 47:13-48:9. Undisputed that EVR providers can access data from the CDK and Reynolds DMS through manual reporting tools. Disputed that manual reporting tools are equivalent in functionality to data access through independent integrators or certified access programs. *See* PJ SAF 111.

11. MVSC has been able to receive DMS data through manual reporting tools such as Reynolds's Dynamic Reporting (or prior Reynolds's reporting tools such as Query Builder), and these tools were all MVSC needed to obtain DMS data in non-point-of-sale states, including California before January 1, 2019 and Wisconsin:

Real-time access to dealer data (and participation in the 3PA and RCI programs) has therefore not been necessary in California. Instead, MVSC was able to obtain the

required dealer data by other means. . . [including] through a manual workaround whereby dealers ran a daily report with the necessary data and then transmitted the information to MVSC.

MVSC Dkt. 76 (SAC) ¶ 9; *see also* Ex. 8, Nemelka Tr. 56:4-19.

RESPONSE: Disputed in part. Undisputed that MVSC has been able to use manual reporting tools to process EVR transactions in non-point-of-sale states during the relevant period. Disputed that manual reporting options are equivalent to automated integration or certified integration in terms of functionality. *See* PJ SAF 111. [REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 4, Nemelka Tr. 382:20-383:9 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 461, 8/26/19

Nemelka Decl. ¶¶ 18-22 ([REDACTED])

[REDACTED]

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ex. 21, DX 100 (MVSC_MDL_0063257) at 258-259; Ex. 50, MVSC_MDL_0050295 at 295;

Ex. 51, MVSC_MDL_0049289 at 289, respectively (all emphases in original).

RESPONSE: Disputed in part. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Disputed that manual import workarounds were equivalent in terms of functionality to automated access through independent integrators or certified integration. *See* PJ SAF 111.

13. [REDACTED]

[REDACTED]

[REDACTED] *E.g.*, Ex. 52, MVSC_MDL_0025901 at 902 (relevant portions highlighted) [REDACTED]

[REDACTED]

[REDACTED] Ex. 53, MVSC_MDL_0028510 at 511 ([REDACTED])

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Ex. 54, MVSC_MDL_0042223 at 223 ([REDACTED])

[REDACTED]; Ex. 22, DX 304 (MVSC_MDL_0078314) at 314 [REDACTED]

[REDACTED]

[REDACTED] MVSC Dkt. 76 (SAC) ¶ 173 (many dealers use manual reporting tools to retrieve necessary data from their DMS).

RESPONSE: Undisputed.

14. [REDACTED]

[REDACTED]. Ex. 8, Nemelka Tr. 170:20-171:4 [REDACTED]

[REDACTED] *id.* at 236:6-16, 236:25-237:9 (accord).

RESPONSE: Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 435, REYMDL00036144, at -6144 ([REDACTED])

[REDACTED] Ho Ex. 115, PX 394, at REYMDL00037733 [REDACTED]

[REDACTED] Ho Ex. 9, Hill (Individual) Tr. 321:18-322:21 [REDACTED]

[REDACTED] Ho Ex. 116, PX 395, at REYMDL00036133 ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 117, PX 396, at [REDACTED]

REYMDL00116429-30 ([REDACTED]

[REDACTED] Ho Ex. 93, PX 148, at REYMDL00068351 ([REDACTED]

15. [REDACTED]. Ex. 23, DX

288 (MVSC_MDL_0025987) at 987 [REDACTED]

[REDACTED] Ex. 16, Bulusu Tr. 161:24-162:1. *See also* Ex. 55,

MVSC_MDL_0025092 at 092 [REDACTED]

[REDACTED] Ex. 24, DX 289 (MVSC_MDL_0045950) at 950

RESPONSE: Disputed in part. [REDACTED]

[REDACTED]. To the extent

suggested, that assertion is not supported by the cited evidence.

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ex. 25, DX 99 (MVSC_MDL_0009708) at 708; Ex. 56, MVSC_MDL_0009716 at 716; Ex. 57, MVSC_MDL_0068528 at 528; Ex. 26, DX 98 (MVSC_MDL_0049511) at 511, respectively. *See also* Ex. 58, MVSC_MDL_0083475 at 475 [REDACTED]

[REDACTED] Ex. 146, MVSC_MDL_0082067 at 069 (same); Ex. 147, CDK-1379766 at 767 [REDACTED]

[REDACTED]

RESPONSE: [REDACTED]

[REDACTED]

[REDACTED]. Disputed that manual import workarounds were equivalent in terms of functionality to the automated access through independent integrators or certified integration. Ho Ex. 4, Nemelka Tr. 250:18-24 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 251:11-17 ([REDACTED])

[REDACTED]

[REDACTED] *See also* PJ SAF 111.

17. [REDACTED]

[REDACTED] Ex. 27, DX 286 (MVSC_MDL_0000970) at 974 ([REDACTED])

[REDACTED]; Ex. 24, DX 289 (MVSC_MDL_0045950)

at 953 ([REDACTED])

RESPONSE: Undisputed. [REDACTED]

[REDACTED] Ho Ex. 423, MVSC_MDL_0069963, at -9963

[REDACTED]

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex.

12, Armstrong Tr. 122:24-123:6; Ex. 7, J. Nemelka Decl. ¶¶ 9, 11; Ex. A, Bresnahan Rebuttal Rpt.

¶¶ 364-65; Ex. 16, Bulusu Tr. 211:24-213:4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *id.* at 220:19-221:9 ([REDACTED])

[REDACTED]; Ex. 28, DX 293 (MVSC_MDL_0079468) at 468 [REDACTED]

[REDACTED]

RESPONSE: Disputed in part. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ho Ex.

32, Armstrong (30(b)(6)) Tr. 60:8-10; Caseria Ex. 5 (Dkt. 957-5), Klein Reply Report ¶ 114.

19. [REDACTED]

[REDACTED]. Ex. 7, J. Nemelka Decl. ¶¶ 9, 11; Ex. 1, Israel Rpt. ¶ 190 [REDACTED]

[REDACTED]

[REDACTED]

Ex. 4, Klein Rpt. ¶ 35; Ex. 6, Klein Tr. 297:17-25; Ex. 8, Nemelka Tr. 205:1- 10 [REDACTED]

[REDACTED]

[REDACTED] *id.* 250:4-18 ([REDACTED])

[REDACTED]; Ex. 25, DX 99 (MVSC_MDL_0009708) at 708 [REDACTED]

[REDACTED] Ex. 16, Bulusu Tr. 191:15-192:15,

194:17-195:18 ([REDACTED])

RESPONSE: Disputed in part. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ho

Ex. 461, 8/26/19 Nemelka Decl. ¶ 11 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];

Ho Ex. 56, Klein Tr. 296:22-297:3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Caseria Ex. 4 (Dkt. 957-4), Klein Report ¶ 36 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See also* MVSC Response to Reynolds's Statement of Fact No. 10,

supra. [REDACTED]

[REDACTED] Ho Ex. 461, 8/26/19 Nemelka Decl. ¶ 9.

20. [REDACTED]. Ex. 6, Klein Tr. 298:2-6.

RESPONSE: Undisputed.

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See Ex. 60, REYMDL00666070 at 074 [REDACTED]

[REDACTED] Ex. 14,

Strawsburg Tr. 60:10-61:9 (accord); Ex. 61, REYMDL00596446 at 447 [REDACTED]

[REDACTED]; Ex. 15, Medina 30(b)(6) (CVR) Tr. 45:11-16, 146:8-147:24 ([REDACTED])

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED]. Ho Ex. 129, PX 497, at REYMDL00265044-45 [REDACTED]

[REDACTED] Fenske Ex. 71 (Dkt. 975-71), Bresnahan Report ¶ 361

[REDACTED]). MVSC had to develop its own manual workaround to access data on the Reynolds DMS. Caseria Ex. 5 (Dkt. 957-5), Klein Reply Report ¶ 110 [REDACTED]

22. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Ex. 62, REYMDL00118294 at 299; Ex. 15, Medina 30(b)(6) (CVR) Tr. 80:24- 81:19;
Ex. 63, REYMDL00134216 at 229, 232.

RESPONSE: Disputed in part. [REDACTED]

[REDACTED]
[REDACTED] Ho Ex. 11, Strawsburg Tr. 31:21-32:3 [REDACTED]

[REDACTED] *id.* 36:4-9 ([REDACTED])

[REDACTED] Ho Ex. 124, PX 476, at

REYMDL00118773.007 [REDACTED]

[REDACTED], *id.* at -8773.003 ([REDACTED])

[REDACTED] Ho Ex. 52, Medina (CVR 30(b)(6)) Tr. 79:24-80:1 [REDACTED]

[REDACTED]; Ho Ex. 128, PX 491, at CDK-1727402 ([REDACTED])

[REDACTED] Ho Ex. 67,

5/29/20 Ltr. from J. Glickstein to J. Hafenbrack and C. Bonomo [REDACTED]

[REDACTED] Ho Ex. 124, PX 476, at REYMDL00118773.033 [REDACTED]

[REDACTED] Ho Ex. 11,
Strawsburg Tr. 36:20-41:7 ([REDACTED])

[REDACTED]).

[REDACTED] Ho Ex. 129, PX 497, at REYMDL00265030-37.

23. [REDACTED]

[REDACTED]. Ex. 64, REYMDL00568127 at 128 (2016 RCI
proposal to Dealertrack RTS); Ex. 17, Green 30(b)(6) (Cox) Tr. 236:4-238:10 [REDACTED]

RESPONSE: Undisputed.

24. Dealertrack RTS provides EVR services in 15 states: Pennsylvania and Connecticut (where it is the leading provider in both states), and California, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Virginia, Wisconsin; competes with CVR in 12 states (including California, Illinois, Wisconsin, and Virginia, where MVSC also competes); [REDACTED]; and has the exclusive endorsement of the automobile associations in Pennsylvania, Wisconsin, Virginia, New York, New Jersey, Louisiana, and Indiana. *Compare* Ex. 155, Dealertrack, *In-State Registration*

and Title Solutions at 4-6, 10-16, *with* Ex. 162, CVR, *CVR Solutions*; Ex. 48, CVR- 0309005 at 010 and 021; Ex. 60, REYMDL00666070 at 074.

RESPONSE: Undisputed.

25. [REDACTED]

[REDACTED]

[REDACTED] Ex. 29, DX 88 (MVSC_MDL_0009749) at 749-750.

RESPONSE: Undisputed.

26. [REDACTED]

[REDACTED]

[REDACTED] *See* Ex. 66, MVSC_MDL_0056485; Ex. 67, MVSC_MDL_0056968 at 968-970.

RESPONSE: Undisputed.

27. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See* Ex. 68, REYMDL00037507 ([REDACTED])

[REDACTED]; Ex. 69,

REYMDL01076538 [REDACTED]

Ex. 70, MVSC_MDL_0009439 at 440 ([REDACTED])

[REDACTED]

[REDACTED] Ex. 71, MVSC_MDL_0003567 at 619.

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ho Ex. 20, Goroff (TitleTec 30(b)(6)) Tr. 42:13-43:23

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *see also id.* 76:13-77:7 [REDACTED]

[REDACTED] *cf.* Ho Ex. 446, REYMDL00207183, at -7183-84

[REDACTED]

[REDACTED]

28. [REDACTED]

[REDACTED]

[REDACTED]. Ex. 30, DX 91

(MVSC_MDL_0000608) at 609.

RESPONSE: Undisputed.

29. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ex. 30, DX 91

(MVSV_MDL_0000608) at 609-610; Ex. 31, DX 92 (MVSC_MDL_0000779) at 782.

RESPONSE: Undisputed.

30. [REDACTED]

184:16-185:8 ([REDACTED])

[REDACTED] *id.* at 189:19-190:8 [REDACTED]

Ex. 16, Bulusu Tr. 121:8-11

Ex. 70, MVSC_MDL_0009439 at 440 [REDACTED]

[REDACTED]

31. [REDACTED]

1. *Journal of the American Medical Association*, 2000; 284: 1012-1013.

[REDACTED]

92 (MVSC_MDL_0000779) at 779; Ex. 8, Nemelka Tr. 196:7-197:1.

32. [REDACTED]

1. *Journal of Management Studies*, 1990, 27, 1, 1-14.

Ex. 32, DX 93 (MVSC_MDL_0002478) at 479 ([REDACTED])
[REDACTED] Ex. 72, MVSC_MDL_0002834 at 834; Ex. 70,
MVSC_MDL_0009439 at 440.

RESPONSE: Disputed in part. [REDACTED]

[REDACTED] Caseria Ex. 72 (Dkt. 958-21),
MVSC_MDL_0002834, at -2834.

33. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Ex. 73,
MVSC_MDL_0003763 at 764-765.

RESPONSE: Undisputed.

34. [REDACTED]. Ex. 33, DX 94
(MVSC_MDL_0021969) at 969 [REDACTED]
[REDACTED]. *See also* Ex. 74, MVSC_MDL_0020604 at 604 [REDACTED]
[REDACTED] Ex. 8, Nemelka Tr. 184:16-185:8, 185:9-186:4, 189:19-190:8, 190:10-
13 ([REDACTED])
[REDACTED]; Ex. 16, Bulusu Tr. 121:8-11 (accord);
Ex. 70, MVSC_MDL_0009439 at 440 ([REDACTED])
[REDACTED]
[REDACTED]

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED]

35. [REDACTED]

[REDACTED]

[REDACTED] Ex. 75,
MVSC_MDL_0003940 at 940-941; Ex. 12, Armstrong Tr. 152:21-24; Ex. 9, R. Schaefer Decl.
[Auth. Dkt. 92] ¶ 62; Ex. 33, DX 94 (MVSC_MDL_0021969) at 969 ([REDACTED])
[REDACTED] Ex. 2,
Israel Reply Rpt. ¶ 243; Ex. A, Bresnahan Rebuttal Rpt. ¶¶ 352-56; Ex. A, Rubinfeld Rebuttal Rpt.
¶ 77, 78.

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Caseria Ex. 33 (Dkt. 957-33), DX 94, at
MVSC_MDL_0021971 ([REDACTED]), *id.* -
1969 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Ho Ex. 452,
REYMDL01076538 ([REDACTED])
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

36. [REDACTED]
[REDACTED]
[REDACTED] Ex. 75, MVSC_MDL_0003940 at 940; Ex. 76,
MVSC_MDL_0081810 at 810 [REDACTED]
[REDACTED]

RESPONSE: Undisputed.

37. EVR provider Title Technologies, LLC (“TitleTec”) has been in RCI [REDACTED]; competes with CVR in all six states TitleTec operates in: Florida and Georgia (both states where TitleTec has the exclusive endorsement of the automobile associations [REDACTED] [REDACTED], as well as Virginia (where MVSC also operates), Maryland, Pennsylvania, and South Carolina; and is [REDACTED] Ex. 18, Goroff 30(b)(6) (TitleTec) Tr. 24:24-25:2, 33:13-35:8, 48:9-15; Ex. 162, CVR, *CVR Solutions*; Ex. 34, DX 95 (MVSC_MDL_0021707) [REDACTED] [REDACTED]; Ex. 48, CVR-0309005 at 012, 019 ([REDACTED])

[REDACTED]

[REDACTED] Ex. 60, REYMDL00666070 at 074 ([REDACTED])

[REDACTED] Ex. 68, REYMDL00037507 [REDACTED]

[REDACTED]

RESPONSE: Undisputed.

38. EVR provider AIB, Inc. (“AIB”) has been in RCI [REDACTED]. See Ex. 68, REYMDL00037507 [REDACTED]

[REDACTED]

RESPONSE: Undisputed.

39. EVR provider DLRdmv LLC (“DLRdmv”), founded in 2017, has been in RCI [REDACTED] and competes with CVR in Florida (where DLRdmv has been the market leader since 2018) and Georgia. See Ex. 18, Goroff 30(b)(6) (TitleTec) Tr. 100:22-101:19; Ex. 68, REYMDL00037507 [REDACTED]

Ex. 69, REYMDL01076538 ([REDACTED]) Ex. 156, DLRdmv Press Release, *DLRdmv Becomes Florida’s Number One Provider of Electronic Titling Solutions* (as of November 2018, DLRdmv was the leading EVR provider in Florida, and the fastest-growing provider in both Florida and Georgia).

RESPONSE: Undisputed in part and objected to in part. Undisputed that DLRdmv competes with CVR in Florida and has been in RCI since [REDACTED]

Object to the statements that DLRdmv has been a market leader and that it is the fastest growing EVR provider in Florida and Georgia. As offered, those statements are inadmissible hearsay.

40. EVR provider Auto Data Direct, Inc. (“ADD”) has been in RCI since [REDACTED], and has competed with CVR in Florida. See Ex. 69, REYMDL01076538 ([REDACTED]), at 3

(relevant portion highlighted)) (RCI data regarding ADD); Ex. 48, CVR-0309005 at 011-012.

RESPONSE: Undisputed.

41. EVR provider DDI Technology (also known as Decision Dynamics, Inc., “DDI”) has been in RCI [REDACTED] and competes with CVR in all four states DDI operates in: South Carolina (where DDI is endorsed by the South Carolina dealers association), Florida, Georgia, and Indiana.

Ex. 77, REYMDL01076537 (“[REDACTED]

[REDACTED] Ex. 157, RCI Third Party List, *Vehicle Registration*; Ex. 158, DDI Technology, *Premier EVR*.

RESPONSE: Undisputed in part and objected to in part. Undisputed that DDI competes in South Carolina, Florida, Georgia, and Indiana and that DDI is RCI-certified.

Object to the statement that DDI has the endorsement of the South Carolina dealers association. As offered, the statement is inadmissible hearsay.

42. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ex. A, Bresnahan Rebuttal Rpt., Fig. 24. *See also id.* ¶ 388 [REDACTED]

[REDACTED]

[REDACTED]

RESPONSE: Undisputed.

43. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ex. 8, Nemelka Tr. 221:13-18.

RESPONSE: Disputed in part. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. In 2014, new vehicle registrations in California represented 11.3% of all new vehicle registrations nationwide whereas new vehicle registrations in Florida, Pennsylvania, Georgia, Virginia, Maryland, and South Carolina combined represented 19.9% of all new vehicle registrations nationwide. Ex. 152, National Automobile Dealers Association, *NADA Data 2014* at 16.

RESPONSE: Undisputed.

45. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 78, REYMDL00500165 at 165.

RESPONSE: Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

46. [REDACTED] CVR acquired California EVR provider AVRS in 2015, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 79, REYMDL00101792 at 793. *See also* Ex. 83, REYMDL00500766 at 767 [REDACTED]

[REDACTED]

[REDACTED] Ex. 49, MVSC_MDL_0072361 at 362 [REDACTED]

RESPONSE: Disputed in part as phrased. Undisputed that CVR purchased AVRS in 2015.

[REDACTED]

[REDACTED]. Caseria Ex.79 (Dkt. 958-28), REYMDL00101792, at -1793 (“[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *See* MVSC’s Response to Fact No. 45.

47. [REDACTED]

[REDACTED] :

[REDACTED]

Ex. 80, CVR-0061255 at 255; *id.* ([REDACTED]

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED] 15. *See* MVSC's Response to Fact No.

45.

48. [REDACTED]

Ex. 59, REYMDL00597237 at 237. *See also* Ex. 65, REYMDL00118382 at 382 ([REDACTED]

[REDACTED] Ex. 81, CVR-0013917 at 917 ([REDACTED]

Ex.

82, CVR-0069882 at 882 [REDACTED]

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED]. Caseria Ex. 59 (Dkt. 958-8), REYMDL00597237, at -7237 [REDACTED]

See

MVSC's Response to Fact No. 45.

49. [REDACTED]

[REDACTED]

[REDACTED] Ex. 84, REYMDL00109808 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 148, REYMDL00071109 at

109 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 85, REYMDL00159230 ([REDACTED])

[REDACTED]

[REDACTED]; Ex. A, Bresnahan Rebuttal Rpt ¶ 346 n.390 ([REDACTED])

[REDACTED]

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ho Ex. 442,

REYMDL00117700, at -7702 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

50. [REDACTED]

[REDACTED] Ex. 86, REYMDL00597222 at 226

[REDACTED]; Ex. 61,
REYMDL00596446 at 447 ([REDACTED])

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED] Ho Ex. 442, REYMDL00117700,
at -7702 [REDACTED]

Ho Ex. 450, REYMDL00597237, at -7243 [REDACTED]

[REDACTED] (emphasis added); Caseria Ex. 79 (Dkt. 958-28), REYMDL00101792,
at -1793 [REDACTED]

51. [REDACTED]

[REDACTED]. Ex. 87, MVSC_MDL_0000669 at 669 ([REDACTED]); Ex. 88, MVSC_MDL_0002159 at 160-161 [REDACTED]; Ex. 35, DX 106 (CDK-3009134) at 134 [REDACTED]; Ex. 89, MVSC_MDL_0021478 at 478 ([REDACTED]); Ex. 90, MVSC_MDL_0005263 at 263 ([REDACTED]); Ex. 36, DX 97 (MVSC_MDL_0007362) at 365 ([REDACTED]); Ex. 91, MVSC_MDL_0009322 at 328 ([REDACTED]); Ex. 37, DX 108 (MVSC_MDL_0068017) at 017 ([REDACTED]); [REDACTED]; [REDACTED]; [REDACTED], Ex. 92, MVSC_MDL_0009690 at 690, but did not receive a substantive response from CDK. MVSCDkt. 76 (SAC) ¶ 125.

RESPONSE: Undisputed.

52. [REDACTED]

[REDACTED] Ex. 8, Nemelka Tr. 242:21-244:4.

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 4, Nemelka Tr. 242:21-244:4.

53. [REDACTED]

[REDACTED]

[REDACTED] Ex. 93, CDK-0002272 at 380.

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; Ho Ex. 130, PX 498, at REYMDL00118362 [REDACTED]
[REDACTED]
[REDACTED]

54. [REDACTED]
[REDACTED]
[REDACTED] Ex. 94, MVSC_MDL_0049305 at
305.

RESPONSE: Disputed as phrased. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Caseria Ex. 94 (Dkt. 958-43), MVSC_MDL_0049305,
at -9305.

55. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Ex. 16, Bulusu Tr. 45:8-46:22 ([REDACTED]
[REDACTED]; Ex. 39, DX 87 (MVSC_MDL_0055337) at 339 [REDACTED]

[REDACTED]); Ex. 16, Bulusu Tr. 74:2-76:4 ([REDACTED]);
[REDACTED]; *id.* at 25:5-8, 27:3-
28:2 ([REDACTED]);
[REDACTED]); Ex. 95, MVSC_MDL_0085686 at
686 ([REDACTED]); Ex. 38, DX 587
(MVSC_MDL_0069953) (2012 Authenticom Service Agreement); Ex. 12, Armstrong Tr. 172:8-
173:21 ([REDACTED]);
[REDACTED]).

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Caseria Ex.
16 (Dkt. 957-16), Bulusu Tr. 74:2-76:4.

56. [REDACTED]
[REDACTED]” Ex. 98,
MVSC_MDL_0013203 at 203, [REDACTED]
[REDACTED]. Ex. 16, Bulusu Tr. 100:18-24. *See also* Ex. 40, DX 280 (MVSC_MDL_0002456) at
456 ([REDACTED])

[REDACTED]
[REDACTED]
[REDACTED] Ex. 16, Bulusu Tr. 91:4-92:1 [REDACTED]
[REDACTED]

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED]

[REDACTED] Caseria Ex. 98 (Dkt. 958-47), MVSC_MDL_0013203, at -3203.

[REDACTED]

[REDACTED] See *id.*; Caseria Ex. 40 (Dkt. 957-40), DX 280, at MVSC_MDL_0002456 ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED] Caseria Ex. 40 (Dkt. 957-40), DX 280; Caseria Ex. 16 (Dkt. 957-16), Bulusu Tr. 91:4-92:1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 17, Bulusu Tr. 92:15-93:3; *see also* Ho Ex. 31, Armstrong (Individual) Tr. 267:8-15 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *id.* 268:15-19 [REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 4, Nemelka Tr. 387:9-19 [REDACTED]

[REDACTED]

57. [REDACTED]

[REDACTED]

[REDACTED]

Ex. 96, MVSC_MDL_0055834 at 835; *see also id.* [REDACTED]

[REDACTED]); Ex. 97, MVSC_MDL_0038592 at 592 [REDACTED]

[REDACTED]

RESPONSE: Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 4, Nemelka Tr. 159:2-24 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 17, Bulusu Tr. 45:8-12 [REDACTED]

[REDACTED]

[REDACTED]

58. [REDACTED]

[REDACTED]

[REDACTED] Ex. 16, Bulusu Tr. 45:8-46:15 [REDACTED]

[REDACTED]; *id.* at 99:13-15 ([REDACTED])
[REDACTED]; Ex. 99,
MVSC_MDL_0016150 at 152 ([REDACTED])
[REDACTED]
[REDACTED]; Ex. 100, PROQ-08407 at
407 ([REDACTED])
[REDACTED]; Ex. 101, MVSC_MDL_0066246 at 246 ([REDACTED])
[REDACTED]; Ex. 102,
MVSC_MDL_0040855 at 856 ([REDACTED]) ([REDACTED])
[REDACTED]
[REDACTED]
[REDACTED]; Ex. 103, MVSC_MDL_0052909 at 912 ([REDACTED])
[REDACTED]; Ex. 104, MVSC_MDL_0075209 at 210 ([REDACTED])
[REDACTED]; Ex. 105, PROQ-00365 at 365-366 ([REDACTED]).

RESPONSE: Disputed in part. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *See* Ho Ex. 430, MVSC_MDL_0085161 [REDACTED]
[REDACTED]
[REDACTED]; *see also* Ho Ex. 407, MVSC_MDL_0050807, at -0807
[REDACTED]

[REDACTED]

[REDACTED]. ACOM SUF 23.

Cf. Ho Ex. 4, Nemelka Tr. 47:23-24 [REDACTED]

[REDACTED], *id.* 159:4-5 [REDACTED]

[REDACTED]

59. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ex. 8,

Nemelka Tr. 146:22-157:13; *id.* at 156:7-8 [REDACTED]

[REDACTED] Ex. 41, DX 84 (MVSC_MDL_0037783) at 783-784; Ex. 42, DX 85 (MVSC_MDL_0037785) at 387; Ex. 106, MVSC_MDL_0013434 at 434; Ex. 107, MVSC_MDL_0037084 at 085, at 2, 4, 6, 8, 10 (relevant portions highlighted); Ex. 108, MVSC_MDL_0037917 at 917; Ex. 109, MVSC_MDL_0039956 at 957; Ex. 110, MVSC_MDL_0036106 at 106; Ex. 111, MVSC_MDL_0010350 at 350; Ex. 112, MVSC_MDL_0026953 at 953; Ex. 113, MVSC_MDL_0065775 at 775-777; Ex. 114, MVSC_MDL_0038717 at 717; Ex. 115, MVSC_MDL_0038188 at 188-189; Ex. 116, MVSC_MDL_0039140 at 140-141; Ex. 117, MVSC_MDL_0040327 at 328; Ex. 118, PROQ-14048 at 048; Ex. 119, MVSC_MDL_0075098 at 098. *See also* Ex. 120, MVSC_MDL_0046997 at 999 [REDACTED]

[REDACTED]

[REDACTED]

RESPONSE: Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 4, Nemelka Tr. 147:1-6. [REDACTED]

[REDACTED]

[REDACTED].

60. [REDACTED]

[REDACTED]

[REDACTED]

Ex. 42, DX 85 (MVSC_MDL_0037785) at 786 (capitalization in original).

RESPONSE: [REDACTED]

[REDACTED]

61. [REDACTED]

[REDACTED]

[REDACTED]. See, e.g., MVSC Dkt. 76 (SAC) ¶¶ 158-161, 170, 181-184 (specific factual allegations only against CDK and/or CVR); Ex. 12, Armstrong Tr. 250:4-7, 17-24 [REDACTED] (MVSC_MDL_0052246) [REDACTED] Ex 99, MVSC_MDL_0016150 at 150; Ex. 121, MVSC_MDL_0062032 at 032; Ex. 122, MVSC_MDL_0016157 at 159-160; Ex. 123, MVSC_MDL_0022425 at 425; Ex. 124, MVSC_MDL_0071323 at 323; Ex. 125, MVSC_MDL_0009806 at 806, 809; Ex. 25, DX 99 (MVSC_MDL_0009708) at 708-709; Ex. 126, MVSC_MDL_0051362 at 363; Ex. 56, MVSC_MDL_0009716 at 716; Ex. 127, MVSC_MDL_0051364 at 364-365; Ex. 128, MVSC_MDL_0075688 at 689; Ex. 1, Israel Rpt. ¶ 161 n.243 ([REDACTED]).

RESPONSE: Disputed in part. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *E.g.*, Ho Ex. 130, PX 498, at

REYMDL00118363 ([REDACTED])

[REDACTED]; Ho Ex. 131, PX 499, at -

7615 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 254, PX 1524, at REYMDL00479400 [REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 51, Hill (Reynolds 30(b)(6)) Tr.

86:18-88:11 [REDACTED]

[REDACTED] Ho Ex. 449, REYMDL00537499, at -7500 ([REDACTED])

[REDACTED]

[REDACTED]; *id.* at -7501 [REDACTED]

[REDACTED]; *see also* Ho Ex. 31, Armstrong (Individual) Tr. 196:7-197:9 [REDACTED]

[REDACTED]

[REDACTED]

62. [REDACTED]

[REDACTED]

[REDACTED]:

[REDACTED]

Ex. 10, 2019_06 BPA TTC Breakdown (“TTC FLSP Breakdown” worksheet, at 1, 7, 13, 19, 25, 31 (relevant portions highlighted); *id.* at 6 (relevant portions highlighted) ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED] *See also* Ex. A, Bresnahan Rebuttal Rpt. ¶ 368 & n.439 [REDACTED]

[REDACTED]

[REDACTED] Ex. 6, Klein Tr. 252:3-9 ([REDACTED])

[REDACTED].

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Caseria Ex. 4 (Dkt. 957-4), Klein Report ¶¶ 88-96

[REDACTED]

[REDACTED]

[REDACTED] *id.* Ex. D.6 ([REDACTED])

[REDACTED]; Caseria Ex. 5 (Dkt.

957-5), Klein Reply Report ¶ 106 ([REDACTED])

[REDACTED]; Ho Ex. 56, Klein Tr.

253:11-13 [REDACTED]

63. [REDACTED]

[REDACTED]
[REDACTED]. Ex. 129, MVSC_MDL_0059367 at 368; Ex. 130, MVSC_MDL_0004902 at

903 ([REDACTED])

[REDACTED] Ex. 131,
MVSC_MDL_0022892 at 895 ([REDACTED])

[REDACTED] Ex. 132,
MVSC_MDL_0004970 at 970 [REDACTED]

[REDACTED]
[REDACTED] Ex. 133,
MVSC_MDL_0007360 at 360 [REDACTED]

RESPONSE: Undisputed.

64. [REDACTED]

[REDACTED]
[REDACTED] Ex. 7, J. Nemelka Decl. ¶ 26; Ex. 11, PL by State [REDACTED]

[REDACTED]
Ex. 4, Klein Rpt. ¶ 106 & n.110 ([REDACTED])

RESPONSE: [REDACTED]

[REDACTED]
[REDACTED]. Ho Ex. 461, 8/26/19
Nemelka Decl. ¶ 26. [REDACTED]. Ex.

[REDACTED]
[REDACTED]. See PJ SAF 94.

65. [REDACTED]

[REDACTED]. Ex. 13, Armstrong 30(b)(6) (MVSC) Tr. 68:9-22; Ex. 6, Klein Tr. 158:6-12 (same).

RESPONSE: Undisputed.

66. When MVSC first reached out to Wisconsin in June 2013 about becoming an authorized EVR provider, State officials told MVSC that the State “rarely add[s] new vendors due to the massive start-up resources we need to dedicate from our side.” Ex. 44, DX 1211 at 2.

RESPONSE: Disputed as phrased. Undisputed that the quoted language appears in the document cited. [REDACTED]

[REDACTED]. Ho Ex. 393, MVSC_MDL_0001908, at -1936 [REDACTED]

[REDACTED]
[REDACTED] Ho Ex. 397, MVSC_MDL_0016934, at -6935 [REDACTED]
[REDACTED]
[REDACTED]

see also Caseria Ex. 4 (Dkt. 957-4), Klein Report ¶ 46 ([REDACTED]
[REDACTED]

67. MVSC submitted a formal application for approval to the Wisconsin EVR (“APPS”) program in May 2014, which the Wisconsin DMV denied in August 2014 for the following reasons:

Technical support needed from the DMV . . . Adding any new title/registration vendor requires extensive resources from DMV for start-up programming and testing

* * *

Lack of program expansion to benefit DMV and the Wisconsin consumer . . . It is unlikely that adding a new vendor would increase the number of participants in the program, because Wisconsin dealerships have been processing title applications electronically since legally mandated in 2007. . . . Adding an additional title/registration vendor without expanding the locations participating in the APPS program offers no benefit to either DMV or our customer, the Wisconsin motorist. In fact, dealers and agents that switch vendors require significant time from DMV to facilitate the process.

Ex. 45, DX 1212 at 1-2 (emphases in original); Ex. 134, MVSC_MDL_0059169 at 169 [REDACTED]

[REDACTED]

[REDACTED]. Ex.

135, MVSC_MDL_0062855 at 858-859.

RESPONSE: Disputed as phrased. Undisputed that Wisconsin cited “[t]echnical support needed from the DMV” and “lack of program expansion to benefit DMV and the Wisconsin consumer” as reasons for its denial of MVSC’s application to participate in the program. [REDACTED]

[REDACTED] Caseria Ex. 5 (Dkt. 957-5),
Klein Reply Report ¶ 42 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

68. MVSC was not the only EVR provider to be denied by the State of Wisconsin: [REDACTED]
[REDACTED] and by 2015, six other EVR providers had expressed interest in entering the Wisconsin EVR market but had been rejected by the State. Ex. 136, MVSC_MDL_0060313 at 313; Ex. 149 (Wisconsin’s Fiscal Estimate for Adding Title/Registration Vendor) at 2 (the DMV rejected the applications of three EVR providers on the same bases it denied MVSC, *i.e.*, the amount of DMV resources it would require and the lack of anticipated benefit to the DMV or consumers, and told three others to not even bother applying).

RESPONSE: Undisputed.

69. The State of Wisconsin was not accepting new EVR providers and was considering the possibility of potentially authorizing new EVR providers in 2019, as described in a letter that Wisconsin's DMV sent to MVSC in February 2017:

In recent years you [MVSC] have requested to partner with the Wisconsin Department of Transportation and become a recognized vendor for [EVR] transactions. **At the time of your request the department was not accepting new vendors into [its] program.** I'm pleased to announce the department will be embarking on a new path that will allow additional vendors to participate in this program.

* * *

We are still developing a definitive timetable, but **our goal to implement new vendors into the program is early 2019.**

Ex. 46, DX 1213 (emphasis added); Ex. 150 (Email Re: DMV Desk Update, Apr. 9, 2019) at 2 (as of the last known update from the Wisconsin DMV in March 2019, the DMV's timeline for accepting new providers was still in flux, and estimated at that time to be fall 2019); *see also* Ex. 45, DX 1212 at 2 ("We will certainly keep [MVSC's] proposal on file and reconsider it in the future **if we are in a position where it makes sense to add another title/registration vendor.**") (emphasis added).

RESPONSE: Disputed as phrased. The 2017 letter from the Wisconsin DMV speaks for itself.

70. The State of Wisconsin said that it was impressed with MVSC's "innovative" EVR app; [REDACTED]
[REDACTED]. Ex. 45, DX 1212 at 2 ("DMVdesk's proposal is very impressive and innovative."); Ex. 151 (Email Thread Re: DMVdesk, Thank You, Mar. 21, 2014) (Wisconsin's DOT remarking on MVSC's "very impressive program"); Ex. 13, Armstrong 30(b)(6) (MVSC) Tr. 69:22-70:1 ([REDACTED])

71. CVR, Dealertrack RTS, and e-MV11 (a state-owned app) operate in Wisconsin; [REDACTED]
[REDACTED] Ex. 159, Wisconsin DOT, *Title and registration processing*; Ex. 137, MVSC_MDL_0054574 at 575.

72. [REDACTED]. *See* Ex. 138, MVSC_MDL_0012816 at 817; Ex. 8, Nemelka Tr.255:4-9.

73. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ex. 8, Nemelka Tr. 255:15-257:16; Ex. 140, MVSC_MDL_0085980 at 983-984 ([REDACTED]).

74. [REDACTED]

[REDACTED]

Ex. 139, MVSC_MDL_0063603 at 604.

-44-

75. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 141, MVSC_MDL_0065747 at 747 [REDACTED]

[REDACTED]

[REDACTED] Ex. 142, MVSC_MDL_0084416.

RESPONSE: Disputed in part. [REDACTED]

[REDACTED]

[REDACTED]

Ho Ex. 402, MVSC_MDL_0041446, at -1447 ([REDACTED])

[REDACTED]

[REDACTED] Ho Ex. 428,

MVSC_MDL_0079497, at -9498 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *see also* Ho Ex. 32, Armstrong (30(b)(6)) Tr. 59:19-21 ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ho Ex. 56, Klein Tr. 153:20-25.

76. [REDACTED]

[REDACTED]

[REDACTED]. Ex. 143, MVSC_MDL_0086228 at 228 [REDACTED]

[REDACTED]); Ex. 47, DX 102 ([REDACTED]); Ex. 4, Klein Rpt. ¶ 104 [REDACTED]).

RESPONSE: Undisputed.

77. [REDACTED]

[REDACTED] Ex. 13, Armstrong 30(b)(6) (MVSC) Tr. 69:8-12; Ex. 6, Klein Tr. 158:6-12 (same).

RESPONSE: Disputed as phrased. [REDACTED]

[REDACTED] Ho Ex. 415, MVSC_MDL_0060454, at -0455.

78. MVSC, CVR, Dealertrack RTS and Electronic License Service, LLC (“ELS”) are approved EVR providers in Illinois; ELS is not in RCI. Ex. 160, Office of the Illinois Secretary of State, *Electronic Registration and Title (ERT) Service Providers*; Ex. 144, MVSC_MDL_0012050 at 052; *see* Ex. 157, RCI Third Party List, *Vehicle Registration*.

RESPONSE: Undisputed that CVR, MVSC, Dealertrack RTS, and ELS provide registration services in Illinois; [REDACTED]

[REDACTED]. Caseria Ex. 5 (Dkt. 957-5), Klein Reply Report ¶ 14.

79. [REDACTED]

[REDACTED]

[REDACTED] *E.g.*, Ex. 145, MVSC_MDL_0027801 at 803 ([REDACTED])

[REDACTED]

[REDACTED]; Ex. 60, REYMDL00666070 at 074; Ex. 6, Klein Tr. 252:3-9; Ex. 48, CVR-0309005 at

007, 008, 010-012, 019, 021-022 (

).

RESPONSE: Objected to. No admissible evidence is cited to support the proposition.

80. MVSC settled with CDK in October 2019 and is now a member of CDK's 3PA program. Dkt. 778 (Stip. of Dismissal); Ex. 153, CDK, *3PA Partner List* at 4.

RESPONSE: Undisputed.

Dated: July 28, 2020

Respectfully submitted,

/s/ Derek T. Ho

Derek T. Ho

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CERTIFICATE OF SERVICE

I, Derek T. Ho, an attorney, hereby certify that on July 28, 2020 I caused a true and correct copy of the foregoing **PLAINTIFF MOTOR VEHICLE SOFTWARE CORPORATION'S RESPONSES TO DEFENDANT THE REYNOLDS AND REYNOLDS COMPANY'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** to be filed and served electronically via the court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system. Copies of the Under Seal filing were served on counsel of record via email.

/s/ Derek T. Ho

Derek T. Ho

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